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taxation, the excess arising from the bank carrying realty at an excessive valuation, etc., the erroneous assessment could not be corrected on motion of the bank, in view of sections 17-22 of revenue law (Code 1904, Appendix), providing that no tax shall be assessed on the capital stock of a bank, but that the bank shall annually return a report of its stockholders, with the value of the shares held by each, etc., which sections did not levy a tax on the bank, but merely constituted it the stockholders' agent.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 106.]

Error to Hustings Court of Richmond.

Motion by the Main Street Bank, Incorporated, for relief against an erroneous assessment. To review an order dismissing the motion, the Bank brings error. Affirmed.

O'Flaherty, Fulton & Byrd, of Richmond, for plaintiff in error.

The Attorney General and *H. R. Pollard*, of Richmond, for defendants in error.

STEWART et al. v. STEWART et al.

March 21, 1918.

[95 S. E. 388.]

1. Partition (§ 12 (2)*)—Estates Subject of—Equitable Estates.—One who has expended money in purchasing real property at a commissioner's sale for the benefit of another is the equitable owner thereof, although the commissioner's deed was invalid, and may maintain partition of his equitable estate under Code 1904, § 2565, providing that a decree confirming any partition or allotment in a suit for partition shall vest, in the respective parties between or to whom the partition or allotment is made, the title and share under the partition or allotment in like manner as if said decree ordered such title to be conveyed to them and the conveyance was made accordingly.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 803.]

2. Appeal and Error (§ 1041 (2)*)—Review—Amended Pleadings.—In a suit for partition, where an amended bill and pleadings were filed, error cannot be predicated thereupon, where the issues were disposed of on the original bill, and no notice taken of the amended bill or pleadings.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 587.]

Appeal from Circuit Court, Madison County.

Suit for partition by Daniel Stewart and others against D. Y.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Stewart and others. Judgment for plaintiffs, confirming a commissioner's report and ordering a sale, and defendants appeal. Affirmed.

Will A. Cook, of Madison, for appellants.

N. G. Payne, of Madison, for appellees.

NORFOLK SOUTHERN R. CO. *v.* GREENWICH CORP. et al.

March 21, 1918.

[95 S. E. 389.]

1. Parties (§ 59 (1)*)—Substitution.—An entirely new plaintiff cannot be substituted after it has become manifest the original plaintiff can not maintain the action, but the proper practice is to suffer a nonsuit before the jury retire, pursuant to Code 1904, § 3387, and renew the suit in the name of the proper plaintiff.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 345.]

2. Parties (§ 59 (1)*)—Substitution—New Cause of Action.—Code 1904, § 3259, permitting the writ or declaration to be amended to correct a variance, section 3260, requiring exception to jurisdiction to be taken by plea and forbidding such pleas after defendant has demurred, pleaded in bar, or answered, or after decree nisi or conditional judgment at rules, and Laws 1914, c. 331, permitting amendments at any time on terms, etc., do not contemplate substitution of entirely new plaintiffs, but apply to amendments involving amplified and supplemental statements of the original action, and were never intended to permit substitution of a new cause of action.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 346.]

3. Parties (§ 59 (1)*)—Substitution—Stockholders and Corporation.—That stockholders holding most of stock were legal holders of bill of lading and only persons entitled to sue initial carrier under Carmack Amendment (Act Cong. Feb. 4, 1887, c. 104, § 20, 24 Stat. 386, as amended by Act Cong. June 29, 1906, c. 3591, § 7, pars. 11, 12, 34 Stat. 595 [U. S. Comp. St. 1916, §§ 8604a, 8604aa]), would not permit their substitution for the corporation which had sued carrier for negligent delay, since a corporation is a separate entity from its stockholders, with power to sue and be sued, and in a legal forum they stand in the same relation to each other as other litigants.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 345.]

Error to Circuit Court, City of Norfolk.

Assumpsit by the Greenwich Corporation and others against the Norfolk Southern Railroad Company. There was a judg-

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.